IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 339 of 2006

PARAS RAM
V/S
BHERU LAL & ORS.

Mr. JK BHAIYA for Mr. SAJJAN SINGH, for the appellant / petitioner

Date of Order : 11.12.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant at length.

The learned lower Appellate Court has found that the lane in question is only used for passage of rain water falling through eavesdrops, and even the defendant has admitted that the eaves of the plaintiff and eaves of the northern neighbours also fall to this lane. With this it has been found that it has not been the plaintiff's case that the passage of this water of eavesdrops has been obstructed, and that the plaintiff has failed to prove any other right in the lane, so also has failed to prove the lane to be joint property.

Learned counsel for the appellant contended that from the site inspection note prepared by the Commissioner, and from the documents Ex.1, and Ex.2, so also from the

admissions of the defendant and his witness it is clear that the lane is joint, and the learned lower Appellate Court has not even considered those documents. It was also contended that even in the written statement there are material admissions in favour of the plaintiff which too have not been considered.

I have considered the submissions, and learned counsel also read to me both the documents Ex.1 and Ex.2 in extenso, so also the written statement and statements of the witnesses.

Even after reading of the above material, as was read to me, I am of the view that even from all this all that has been admitted or is established is, that the plaintiff has a right of discharging water from eavesdrops in the lane, and nothing more as has been found by the learned lower Appellate Court. Thus, it cannot be said that the findings recorded by the learned lower Appellate Court in this regard are vitiated.

The next submission made was that the finding of the learned trial court on issue no. 2 was not assailed before the learned lower Appellate Court, nor has it been set aside, therefore, the suit could not be dismissed. Suffice it to observe that issue no.2 only comprehended the question about cause of action having not arisen on

26.11.95, and it was found by the learned trial court that the burden of this issue was on the defendant, and there is no evidence on the side of the defendant that the construction did not continue upto 26.11.95, and therefore, it cannot be accepted that the cause of action did not arise on 26.11.95. In my view this finding by itself does not entitle the appellant to decree of the suit. May be that the cause of action my have been arisen on 26.11.95 but then for entitlement to get the decree the plaintiff is to establish the right while the extent of right established has been found above.

Thus, taken from any stand point, and even after reappreciation of evidence, and material as shown to me, I do not find the findings of the learned lower Appellate Court to be requiring any interference.

The appeal thus does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/